

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1740

IN THE MATTER OF:

Served August 31, 1977

Application of VERNON FRANKLIN to)
Remove Vehicle Restriction and Amend) Application No. 992
Certificate of Public Convenience)
and Necessity No. 6, for Corresponding) Docket No. 372
Temporary Authority, and for Authority)
to Change Tariff)

Vernon Franklin (Franklin), an individual, holds Certificate of Public Convenience and Necessity No. 6, issued October 23, 1964, by this Commission. Certificate No. 6 authorizes the irregular-route transportation service specified below.

Charitable and public supported groups, including but not limited to, public, parochial and private schools, churches, Boy and Girl Scouts, and similar groups, and their baggage;

CHARTER OPERATIONS:

Round-trip or one-way;

From points within Arlington and Fairfax Counties, and the Cities of Alexandria, Falls Church and Fairfax, Virginia, to points within the District of Columbia and within the Counties of Montgomery and Prince Georges, Maryland.

RESTRICTED: to the performance of such transportation in school bus type vehicles only. Further restricted that this grant of authority shall not be subject to transfer in any manner or form. (Emphasis added.)

Franklin's current WMATC Tariff No. 2, issued January 20, 1970, and effective February 20, 1970, sets the following charter rates per vehicle:

Hourly Charges	Bus Capacity		
	40-Passenger	44-Passenger	57-Passenger
	First 3 hours	First 3 hours	First 3 hours
Minimum Service Charge	\$24	\$32	\$40
Transportation Charge			
Per Hour Thereafter	\$6	\$8	\$10

Submitted as an appendix to the application is a four-page document captioned "WMATC TARIFF NO. _____, TARIFF OF VERNY FRANKLIN," which sets forth the following rates and charges: 1/

School Type Buses

Hourly Charges

Minimum Service Charge

Transportation Charge Per
Hour Thereafter

Bus Capacity

60 passengers or
greater
First 3 hours-\$40

\$10

OR

Mileage Charges

Transportation Charge Per
Mile

\$0.75

Inter-City Coaches

<u>Capacity of Bus</u>	<u>Minimum Charges First 4 Hours</u>	<u>Rate Per hour Thereafter</u>	<u>Rate Per Mile</u>
38 passengers	\$60	\$10	\$0.60
41 passengers	80	15	.70
46 & 47 passengers	95	19	.95

This document bears no issue or effective date, but reflects the rates which Franklin would charge in the event Application No. 992 is granted.

By petition (letter) submitted together with the above-described application, Franklin requested temporary authority to utilize vehicles other than school buses in his ongoing operations. Pursuant to Order No. 1681, served May 4, 1977, and incorporated herein by reference, the Commission denied Franklin's application for temporary authority and scheduled a public hearing to commence on June 13, 1977. No parties appeared at the hearing in opposition to the application.

1/ Subsequent pages in this appendix are labeled "VERNOY FRANKLIN, WMATC TARIFF NO. 3."

Franklin proposes to utilize 14 over-the-road type buses ranging in size from 38-to 48-passenger capacity. All of these buses are air-conditioned and 11 are equipped with restrooms.

At the hearing various witnesses testified in support of the application. Witnesses representing the Arlington County Recreation Department, the International Order of Job's Daughters, Falls Church High School Band, the Patriots of Northern Virginia and the Tremont Alumni stated their satisfaction with the reliability of Franklin's services and the cleanliness of his vehicles. ^{2/} Their need for service in over-the-road coaches equipped with air-conditioning and restrooms, and the reasonableness of Franklin's rates were also detailed. The witnesses testified that comparable service was not available, and that service in school buses was not satisfactory due to lack of comfort, air-conditioning, rest facilities and storage space for such items as musical instruments.

Franklin's statement of financial condition as of December 31, 1976, reflects current assets of \$19,353, total assets of \$354,005, current liabilities of \$62,202, and long-term obligations of \$45,743. Franklin testified that his financial condition at the time of the hearing had not changed substantially since December 31, 1976.

The findings to be made by the Commission, after hearing, with respect to Franklin's application are set forth in Title II, Article XII, Section 4(b) of the Compact. First, the applicant must be fit, willing, and able to perform the proposed transportation properly and to conform to the provisions of the Compact and the rules, regulations, and requirements of the Commission thereunder. Second, the proposed transportation must be required by the public convenience and necessity.

The Commission finds that applicant has met the statutory requirements and that the application should be granted. The evidence of record establishes that Franklin is fit, financially and otherwise, to perform the proposed service in motor coaches, and that there is a public need for such service. Moreover, the public testimony and lack of opposition to this application indicate that existing carrier service is not meeting the need for transportation described herein.

An additional determination to be made by the Commission herein is whether the proposed tariff is just, reasonable and not unduly discriminatory or unduly preferential between riders or sections of the Metropolitan District. See Compact, Title II, Article XII, §6(a)(2). The proposed rates appear just and reasonable and should provide the carrier with a

^{2/} The Tremont Alumni is a loose-knit organization which appears to exist primarily for the purpose of chartering vehicles to transport its members to and from Washington Redskins home football games.

compensatory return at the lowest cost to the public consistent with the furnishing of such service. Accordingly, the proposed tariff charges shall be approved.

One further matter requires discussion. As noted above, Tremont Alumni appears to be a private organization with the attendance of professional football games as its main function. No evidence that this organization has a charitable nature is apparent, and the Tremont Alumni witness testified that the group is supported only by membership contributions computed by calculating the per capita cost of each bus trip.

In this connection, counsel for applicant submitted a post-hearing brief (letter) in which it is contended that the phrase "and similar groups" modifies the entire description of who may be transported pursuant to Certificate No. 6. To correct this misconception, it is abundantly clear from the face of the certificate that Franklin may transport only "charitable and public supported groups." The remaining terminology merely indicates specific examples of groups which are properly included in that basic description, and application of the well-known doctrine of the last antecedent clearly indicates that the clause "and similar groups" applies only to the exemplary sub-class of "public, parochial and private schools, churches, [and] Boy and Girl Scouts."

On the basis of the evidence herein, we conclude that Franklin may not lawfully transport the Tremont Alumni or similar groups pursuant to the authority granted by WMATC Certificate No. 6. In light of Franklin's stated policy not to transport ineligible groups and the difficulty, as pointed out by applicant's counsel, of determining, in some circumstances, the eligibility of a particular group, issuance of a cease and desist order does not appear to be warranted at this time. Franklin is, however, cautioned strictly to adhere to the terms of his certificate, and to be mindful of his obligation to transport only charitable and public supported groups.

THEREFORE, IT IS ORDERED:

1. That Application No. 992 of Vernoy Franklin, to the extent it seeks removal of a vehicle restriction and the amendment of Certificate of Public Convenience and Necessity No. 6, be, and it is hereby, granted.

2. That Vernoy Franklin, within 20 days from the date of service hereof, file two copies of its WMATC Tariff No. 3 containing the rates approved herein, said tariff to be effective upon acceptance by the Executive Director.

3. That upon acceptance of said tariff, an amended Certificate of Public Convenience and Necessity No. 6 be issued to Vernoy Franklin as authorized herein.

4. That unless said tariff is filed within 20 days from the date of service hereof, or such additional time as may be authorized by the Commission, the grant of authority made herein shall be considered null and void and Application No. 922 shall stand denied in its entirety.

BY DIRECTION OF THE COMMISSION:

A handwritten signature in dark ink, appearing to read "Gregory P. Barth", is written over the printed name.

GREGORY P. BARTH
Acting Executive Director